CHEONG POI CHEE & ORS. v. OOI JEE CHIAK & ORS.

[O. C. J. (Wilson J.) July 22, 1955]

[K. L. — Civil Suit No. 376 of 1954]

Landlord and Tenant — Control of Rent Ordinance, 1948, s. 13(1)(b) — Claim for possession — Condition against assignment or under-letting.

This was a claim for the recovery of premises. The premises were let in 1948 by Chan Wing & Sons Co. Ltd. to the 1st and 2nd defendants for a period of five years from October 7, 1948, to October 6, 1953. It was a term of the lease that the 1st and 2nd defendants would not assign or under-let the said premises or any part thereof to any person without the written consent of the lessors and in the event of the lessees committing a breach of this clause the lessors were to be at liberty to retake possession of the premises. In 1948 the 1st and 2nd defendants took in new partners defendants Nos. 3 and 4. In 1950 the 2nd defendant retired from the business. Later the 5th, 6th and 7th defendants joined the partnership. On February 18, 1952, the plaintiffs as trustees of the Pan-Malayan Gold and Silver Smiths Employees Union bought the premises from Chan Wing & Sons Co. Ltd. On July 3, 1953, they gave notice to the 1st and 2nd defendants to surrender vacant possession of the premises on the expiry of the lease. As this was not done, the action was brought. It was alleged that the 1st and 2nd defendants have assigned the tenancy to the 3rd and 4th defendants, who in turn assigned the premises to a partnership consisting of themselves and three others namely the 5th, 6th and 7th defendants.

Held: (1) on the evidence the 1st and 2nd defendants were no longer partners in the business which was carried on by the other defendants and in fact the scheme of taking in new partners amounted to an assignment of the premises; (2) therefore it was reasonable to make an order in favour of the plaintiffs for the recovery of the premises.

ACTION.

H. L. Wrigglesworth for the plaintiffs.

E. Jeff for the defendants 1, 3, 4, 5, 6 & 7.

Dr. H. Y. Teh for defendant No. 2.

Wilson J. : — The plaintiffs claim that the defendants do give them vacant possession of No. 126, Petaling Street, Kuala Lumpur, and claim they are entitled to an order for recovery of possession under section 13(1)(b) of the Control of Rent Ordinance. The first and second defendants rented the premises from Chan Wing & Sons Company Limited, for a period of five years commencing from the 7th October, 1948, and ending on the 6th October, 1953. On the 18th February, 1952, the plaintiffs' as trustees of the Pan-Malayan Gold and Silver Smiths Employees Union, bought the premises from Chan Wing & Sons Company, Limited. On the 3rd July, 1953, they gave notice to the first and second defendants to surrender vacant possession of the premises on the expiry of the lease. The premises were used as a coffee shop on the ground floor and as lodging rooms upstairs. In 1948 they decided to take in new partners and they took in as partners defendants Nos. 3 and 4. In 1950 the second defendant, who does not live on the premises, retired from the business and at the opening of this case it was stated on his behalf that he had no interest in this case and his counsel was given leave to withdraw. Mr. Wrigglesworth submitted to this ruling on behalf of the plaintiffs and said he would not ask for costs against the second defendant, and Dr. Teh for the second defendant said he would not ask for costs against the plaintiff. Later the 5th, 6th and 7th defendants joined the partnership.

It was a term of the lease that the first and second defendants would not assign or under-let the said premises or any part thereof to any person without the written consent of the lessor, and in the event of the lessees committing a breach of this clause the lessors were to be at liberty to retake possession of the premises. It is alleged that the first and second defendants have assigned the tenancy to the third and fourth defendants, who in turn assigned the premises to a partnership consisting of themselves and three others, namely, the fifth, sixth and seventh defendants.

Although the first defendant is sleeping on the premises, I am satisfied that the first and second defendants are no longer partners in this business which is being carried on by the other defendants, and that this scheme of taking in new partners amounted to an assignment of the tenancy. In all the circumstances, I find that it is reasonable to make an order in favour of the plaintiffs for the recovery of possession of the premises.

There must be an order against all the defendants other than the second defendant in the terms of paragraphs (a), (b), (c) and (d) of the prayer in the plaint. The sum of $2,640 which has been paid in Court will be paid out to the plaintiffs.

Order accordingly.

Solicitors: *S. M. Yong & Co.; Ernest Jeff; & H. Y. Teh.*